

EXHIBIT “C”

Andrew P. Lehman, M.D.
December 15, 2008

 **ORIGINAL**

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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY - CIVIL DIVISION
DOCKET NO. 02389

GEOFFREY CROWTHER,

Plaintiff,

Vs.

CONSOLIDATED RAIL CORPORATION

and CSX TRANSPORTATION, INC.,

Defendants.

DEPOSITION OF ANDREW P. LEHMAN, M.D.

New England Orthopedic Surgeons

300 Birnie Avenue

Springfield, Massachusetts

December 15, 2008 4:20 p.m.

Jonathan P. Lodi

Court Reporter

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1 ANDREW P. LEHMAN, M.D., Deponent, having first
2 been duly sworn, deposes and states as follows:

3 (Lehman Deposition Exhibits 1 - 5:
4 Marked for identification.)

5 EXAMINATION

6 Q. (By Mr. Hall) Good afternoon, Doctor.
7 My name is Stephen Hall, and I represent the
8 Railroad in a piece of litigation involving one of
9 your former patients, Geoffrey Crowther. And
10 before we began, we talked a little bit about the
11 exhibits, and I just want to make sure that we go
12 through them on the record, quickly.

13 Exhibit 1 is marked as the notice of
14 deposition, which has got the legalese, but asking
15 for -- I'm not sure if you saw this or not -- but
16 it was sent to Mr. Joyce, care of -- to you --
17 care of Mr. Joyce, but it asked that you bring the
18 whole file relating to Mr. Crowther. And it's my
19 understanding that Exhibits 3 and 4 constitute the
20 records that relate to your treatment, is that
21 correct?

22 A. Yes, as far as I know. I didn't see
23 the --

24 Q. Sure. And you're more than welcome to

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1 take a look through those. You gave me a --

2 A. Yes. These are the -- this is pretty
3 redundant. This has got -- this stuff has got
4 that in there, but --

5 Q. Okay. There was some additional
6 material in --

7 A. This is --

8 Q. And Exhibit 4 is what you reviewed in
9 advance of the deposition?

10 A. Yes.

11 Q. And Exhibit 2 is your report that you
12 were asked to draft in this case and a copy of
13 your CV, is that correct?

14 A. Yes. And that is also in 4, as well;
15 My CV, not; but the report is.

16 Q. I just want to make sure. Is that a
17 true and accurate copy?

18 A. It appears to be.

19 Q. Okay. And you signed that?

20 A. Yes. This is an older CV. This is
21 not quite accurate.

22 Q. Okay. We can append it afterwards.

23 A. Okay.

24 Q. Is there anything -- as you're looking

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1 **certification?**

2 A. Orthopedic surgery.

3 Q. And, I'm sorry, when did you complete
4 **the boards?**

5 A. Step I, I believe, was in 2003. Part
6 II was following twenty-six months of practice,
7 which was in August of 2006.

8 Q. And have you conducted any research?

9 A. We do have a database here, at New
10 England Orthopedics, where we do clinical
11 research.

12 Q. Have you done any research in the area
13 **of repetitive stress injuries?**

14 A. No.

15 Q. Cumulative trauma disorders?

16 A. No.

17 Q. Or anything involving railroad work?

18 A. No.

19 Q. Have you published any findings with
20 **regard to the cause of degenerative conditions in**
21 **the hip or knees?**

22 A. No.

23 Q. And have you ever been deposed before,
24 **sir?**

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1 A. That's correct.

2 Q. And that was a result of
3 osteoarthritis in both of his knees, is that
4 right?

5 A. That is correct, yes.

6 Q. Okay. So it was the osteoarthritis
7 that caused him to have to have surgery, correct?

8 A. Well, it was the pain from the
9 osteoarthritis which caused him to have a surgery.
10 We don't treat the x-rays. We treat the patient.
11 And the patient was having pain, secondary to his
12 osteoarthritis, and that was refractory to other
13 treatments. So the ultimate treatment for
14 arthritis of the knee or pain, secondary to
15 osteoarthritis of the knee, is a knee replacement.

16 Q. And my understanding is that your
17 opinion is that his old injuries or old surgeries
18 caused the osteoarthritis, is that correct?

19 A. They contributed. I think the cause
20 of osteoarthritis is multi-factorial.

21 Q. Well, in your multi-factorial
22 analysis, you said it was more likely than not
23 that his work conditions may have aggravated his
24 symptoms, but that his osteoarthritis was caused

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1 by his original injuries to the back in the early
2 1970s, right?

3 A. Yes.

4 Q. And so we can agree that his
5 osteoarthritis was caused, in your opinion, within
6 a reasonable degree of medical certainty, was
7 linked back to his original injuries in the early
8 '70s, right?

9 MR. JOYCE: Objection. You can
10 answer.

11 THE WITNESS: I mean, that's a
12 slippery slope you have there. I mean, I
13 think literature would show you that
14 following removal of the meniscus, which he
15 had, greater than ninety percent of the
16 individuals will develop osteoarthritis
17 after twenty years or so. Whether that
18 arthritis is symptomatic or not is a
19 separate issue.

20 Q. (By Mr. Hall) Okay. But the onset of
21 the disease is osteoarthritis, correct?

22 A. I think one of the major contributing
23 factors to his osteoarthritis is his original
24 injuries back in the early 1970s.

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1 Q. You're not saying, within a reasonable
2 degree of medical certainty, that his job at the
3 Railroad caused or contributed to an actual
4 acceleration of the disease process, are you?

5 MR. JOYCE: Objection.

6 THE WITNESS: Well, I think it's
7 unclear whether that is the case or not. I
8 mean, there's no --

9 Q. (By Mr. Hall) I'm sorry. That's
10 unclear?

11 A. It's unclear. I mean, I think, with a
12 reasonable degree of medical certainty, if
13 someone's lifting fifty pounds a day, I think that
14 would accelerate the amount of osteoarthritis you
15 have. I don't think it necessarily initiated the
16 osteoarthritis, but it certainly accelerated it.

17 Q. Well, do you have any objective
18 scientific evidence to support that his job duties
19 at the Railroad caused or contributed to --

20 A. No.

21 Q. -- an actual acceleration?

22 A. Absolutely not.

23 Q. Okay. So -- and you've never reviewed
24 his job duties, have you?

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1 A. Well, I think it did mention that, in
2 Attorney Joyce's note, that he had -- "As a track
3 laborer, track welder, track foreman, track
4 inspector and welder foreman," that "his tasks
5 included operating all types of equipment such as
6 hand and power tools including torches, electric
7 and gas welding equipment, grinders, chipping
8 guns, track chisels, sledge hammers, claw bars,
9 spiking mauls, needle guns, air impact hammers and
10 saws. His tasks required him to stoop, bend, and
11 kneel while welding and repairing railroad track.
12 These tasks also exposed him to an extreme amount
13 of repetitive strenuous motion, vibration force
14 and awkward postures, heavy lifting and carrying
15 along with excessive walking on uneven ballast."

16 So that's the job description that I
17 was privy to.

18 Q. Okay. So the job description that --
19 did you rely on anything else in coming up with
20 the idea that his work may have played a role in
21 his problem, other than what you were provided by
22 Mr. Joyce?

23 A. Common sense.

24 Q. Okay. Well, let me ask you this: Did

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1 **you ask Mr. Crowther about his job?**

2 A. When I last saw him, yes, probably in
3 April, April of 2007, I believe. Or was it
4 February?

5 **Q. And what did he tell you he did then?**

6 A. He said he worked on the railroad for
7 upwards of thirty years and did a lot of heavy
8 work for it. I didn't get the actual job
9 description at that time because I did not believe
10 he was filing this under Workers' Compensation.

11 **Q. Did you take down any notes as to the**
12 **frequency, the amount of bending, stooping,**
13 **lifting, or his use of tools; did you try to look**
14 **at the frequency or anything, or any details about**
15 **that in your file at all?**

16 A. No.

17 **Q. Have you ever went out and looked at**
18 **the type of work that Mr. Crowther did?**

19 A. No.

20 **Q. Have you ever seen any videotape of**
21 **the type of work that Mr. Crowther did?**

22 A. No.

23 **Q. Do you have any familiarity with the**
24 **types of things he actually did, other than --**

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1 A. Just from what I'm reading in this
2 report. That's it.

3 Q. And you would understand that that was
4 given to you by the plaintiff's lawyer, right?

5 A. Yes.

6 Q. And did you read that with any
7 skepticism?

8 MR. JOYCE: Objection.

9 THE WITNESS: No, I did not.

10 Q. (By Mr. Hall) Okay. And I suppose
11 you didn't perform any scientific analysis on the
12 exposure he had at the Railroad, did you?

13 A. No.

14 Q. And not only didn't you quantify his
15 exposure, but you also didn't quantify any rest
16 period or down-time that he may have had on the
17 job as well, is that correct?

18 A. That's correct.

19 Q. And did you talk to Mr. Crowther about
20 his past work history?

21 A. I'm sorry?

22 Q. His past work history.

23 A. No, I did not. I was more interested
24 in treating his knees, replacing his knees.

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1 Q. And you're not an occupational
2 medicine doctor, are you?

3 A. No.

4 Q. And you know that there's a specialty
5 in occupational medicine?

6 A. I do.

7 Q. And those folks deal specifically with
8 work-related conditions, is that right?

9 A. As far as I know, yes.

10 Q. And fair to say that's not what you do
11 on a day-to-day basis?

12 A. That's correct.

13 Q. And you're a treating doctor and a
14 surgeon, right?

15 A. Yes.

16 Q. And you don't routinely examine
17 workers to determine whether or not their work
18 caused or contributed to a problem they're having,
19 right?

20 A. That's correct.

21 Q. And you'd agree with me, sir, that it
22 would be important, if you were making a work-
23 related opinion, to have some sound basis of what
24 the actual work was, would you agree with that?

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1 A. That is correct.

2 Q. And would you agree you don't have a
3 firm, factual foundation of Mr. Crowther's actual
4 job duties --

5 A. No.

6 Q. -- and exposure?

7 MR. JOYCE: Objection.

8 THE WITNESS: I think it says pretty
9 clearly what he does here, and it seems like
10 it's pretty heavy work. I think I have a
11 fair judgment of what he's doing.

12 Q. (By Mr. Hall) Okay. And would you
13 agree that the description of any causality, with
14 regard to any specific work duties, is not
15 contained in your report?

16 A. Well, I mentioned that he's done a lot
17 of heavy lifting and repetitive strenuous motion.

18 Q. And can you define that for me, in
19 terms of Mr. Crowther's actual work history?

20 A. I'm sorry. I don't understand the
21 question.

22 Q. Well, you know, what vibratory stress
23 or what heavy lifting or repetitive strenuous
24 motions did he have to do with regard to his

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1 A. I have no reason to doubt it.

2 Q. Do you have any sound scientific data
3 upon which to rely upon?

4 A. No.

5 Q. Have you ever seen an ergonomic
6 assessment of the type of work that Mr. Crowther
7 did?

8 A. No.

9 Q. And would you agree with me that you
10 don't have a scientific basis for those
11 conclusions?

12 MR. JOYCE: Objection.

13 THE WITNESS: I think if --

14 Q. (By Mr. Hall) You were given those
15 conclusions by a lawyer, right?

16 A. Yes.

17 Q. And that's not scientific, correct?

18 MR. JOYCE: Objection.

19 THE WITNESS: Aren't you a lawyer?

20 MR. HALL: Yes, I'm a lawyer, so --

21 Q. (By Mr. Hall) But you'd agree with me
22 that you were given information by a lawyer?

23 A. I was given information. And I take
24 information, as given to me, as truth, so --

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1 in the development of his osteoarthritis.

2 THE WITNESS: No. I mentioned it in
3 two different places, I believe.

4 Q. (By Mr. Hall) Okay. You said that it
5 made him more symptomatic?

6 A. Yes. We treated his symptoms of knee
7 replacement.

8 Q. Okay. And --

9 A. We didn't treat his x-rays. We
10 treated his symptoms.

11 Q. Okay. And I --

12 A. If he didn't have symptoms, I wouldn't
13 have had to operate on him.

14 Q. But in terms of causing the disease
15 that produced the symptoms, you did not link work
16 to the cause --

17 (Multiple speakers.)

18 THE WITNESS: Can you repeat that
19 again, please?

20 MR. HALL: Sure.

21 Q. (By Mr. Hall) You said that his job
22 duties may have made him more symptomatic, right?

23 A. Yes.

24 Q. And you did not say that his work

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1 **produced the underlying disease, is that correct?**

2 **I mean, that's what your report states.**

3 A. That's correct, other than the ACL
4 injury --

5 **Q. In 1986.**

6 A. -- in 1986, which, from my
7 understanding, was also a work-related injury.

8 **Q. Okay. That was a trauma that occurred**
9 **at work?**

10 A. I believe that also caused the
11 arthritis in his left knee, in addition to the
12 cartilage procedures he had in the early '70s,
13 which are not work-related. I think he would have
14 developed arthritis, irrespective of his job, with
15 the aforementioned operations on his knees.

16 **Q. Okay.**

17 A. However, I do not know if he would
18 have become symptomatic from his arthritis, had it
19 not been for his job. It's impossible to say.

20 **Q. And so you can't say, within a**
21 **reasonable degree of medical certainty, either**
22 **way?**

23 MR. JOYCE: Objection.

24 THE WITNESS: Either way what?

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1 improvement. I expect him to continue doing well
2 for a number of years.

3 Q. And do you know of any valid studies
4 that have been done, that associate Mr. Crowther's
5 work duties with the development of degenerative
6 joint disease in the knees?

7 A. Say that again, please.

8 Q. Are you aware of any valid scientific
9 studies that associate the type of work duties
10 that Mr. Crowther did with the development of
11 degenerative joint disease?

12 A. No.

13 Q. Are you aware of any valid studies
14 that -- or any scientific literature -- that
15 indicates that there are any specific,
16 scientifically-accepted measures that are
17 preventative for degenerative joint disease of the
18 knees?

19 A. Could you please repeat that again?

20 Q. Sure. Is there anything in the
21 scientific literature that shows that a specific
22 change can be made to a job process that would
23 prevent the development of degenerative joint
24 disease in a person like Mr. Crowther?

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1 A. There is no such study that I'm aware
2 of. But there may be instances -- no, there's no
3 such study that I'm aware of.

4 Q. Okay. And so you don't have an
5 opinion that the Railroad could have done some
6 specific change that would have resulted in him
7 not having degenerative joint disease in his knee;
8 would you agree?

9 MR. JOYCE: Objection. That's not Dr.
10 Lehman's role in this case. He's not our
11 liability expert. He's not our ergonomic
12 expert.

13 THE WITNESS: I think job
14 modifications may have alleviated symptoms
15 related to his osteoarthritis, but not
16 necessarily changed his -- the fact that he
17 had osteoarthritis.

18 Q. (By Mr. Hall) So you're unaware of
19 any specific scientific literature that indicates
20 a specific change to be made to his job that would
21 prevent him to have symptoms, is that correct?

22 A. I don't think a scientific study could
23 ever be done in that regard.

24 Q. Are you aware of any specific changes

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1 that could have been done to Mr. Crowther's job
2 that would have changed the outcome with regard to
3 his knees?

4 A. I think if he was more sedentary, he
5 would have less symptoms.

6 Q. Other than that, that's it?

7 A. Right.

8 Q. And it's impossible to prevent
9 degenerative joint disease in the knees, correct?

10 MR. JOYCE: Objection.

11 Q. (By Mr. Hall) Is there any way to
12 prevent it?

13 A. Just sitting on a couch for your
14 entire life, you'd never develop it.

15 Q. Okay.

16 A. It's a matter of wear and tear. The
17 more wear, the more tear.

18 Q. And did you take into consideration
19 Mr. Crowther's avocational activities?

20 A. No. Do you mean activities outside of
21 work?

22 Q. Yes.

23 A. No.

24 Q. And activities of daily living are all

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1 A. Yes.

2 Q. And other than what has been provided
3 by you, in terms of the letter from Mr. Joyce,
4 it's my understanding you've not reviewed any of
5 the case materials; depositions --

6 A. Such as --

7 Q. -- Mr. Crowther's deposition --

8 A. No, I have not.

9 Q. -- or any of the discovery that's been
10 exchanged between the parties?

11 A. No, I did not.

12 Q. And you didn't review his railroad
13 medical file, did you?

14 A. No, I did not.

15 Q. Or any of the medical records from Dr.
16 Baustin or any of his other physicians?

17 A. No. I did request it.

18 Q. And, I'm sorry, who did you make that
19 request to?

20 A. I think my secretary made the request
21 either to Mr. Crowther or to Attorney Joyce for
22 the records related to his ACL injury, as well as
23 his original sports injuries back in the early
24 1970s.

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1 gathered from your opinion is that, in your
2 opinion, Geoff's job as a track laborer and
3 foreman aggravated and worsened his pre-existing
4 osteoarthritis, is that correct?

5 A. That's correct.

6 Q. You're not here telling us that his
7 job as a trackman caused the osteoarthritis,
8 correct?

9 A. That's correct.

10 Q. And in your opinion, is Geoff disabled
11 from working as a trackman, based upon what you --
12 your understanding of what he does at the
13 Railroad?

14 A. If his description of his job is
15 accurate, then yes.

16 MR. JOYCE: Okay. That's all the
17 questions I have.

18 MR. HALL: You have the ability to
19 read the transcript and make any corrections
20 that might be necessary.

21 THE WITNESS: Okay.

22 MR. HALL: Or you can waive that
23 right and basically believe that the court
24 reporter has accurately taken down what